
**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)

Streamlining the Commission's Antenna)
Structure Clearance Procedure)

and)

Revision of Part 17 of the Commission's)
Rules Concerning Construction, Marking,)
and Lighting of Antenna Structures)

WT Docket No. 95-5

DOCKET FILE COPY ORIGINAL

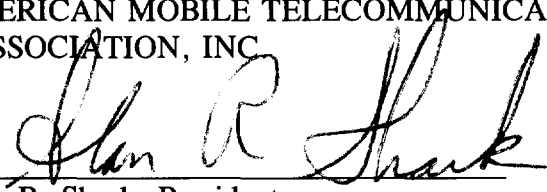
To: The Commission.

**COMMENTS
OF THE
AMERICAN MOBILE TELECOMMUNICATIONS ASSOCIATION, INC.**

Respectfully submitted,

AMERICAN MOBILE TELECOMMUNICATIONS
ASSOCIATION, INC.

By:


Alan R. Shark, President
1150 18th Street, N.W., Suite 250
Washington, D.C. 20036

Of Counsel:

Elizabeth R. Sachs, Esq.
Lukas, McGowan, Nace & Gutierrez, Chartered
1111 19th Street, N.W., Suite 1200
Washington, D.C. 20036
(202) 857-3500

March 21, 1995

No. of Copies rec'd 024
List ABCDE

The American Mobile Telecommunications Association, Inc. ("AMTA" or "Association"), in accordance with Section 1.415 of the Federal Communications Commission ("FCC" or "Commission") Rules and Regulations, respectfully submits its Comments in the above-entitled proceeding.^{1/} The instant Notice proposes to streamline the current antenna structure clearance process by replacing it with a uniform registration program for structure owners. In conjunction with the change, the NPR would revise Part 17 of the Commission's Rules to reflect updated recommendations by the Federal Aviation Administration ("FAA"), and would, for the first time, shift the primary responsibility for compliance with FCC requirements from licensees on a facility to the owner of the structure. Notice at ¶ 1.

The Association strongly supports the FCC's efforts both to streamline what is too frequently an unduly burdensome process for applicants and the agency, and, most critically, to place the responsibility for compliance with life-critical FAA requirements squarely on the shoulder of the party capable of meeting those obligations. The approach outlined in the Notice, with minor modifications, will enable the FCC to accomplish those objectives.

I. INTRODUCTION

AMTA is a nationwide, non-profit trade association dedicated to the interests of the specialized wireless telecommunications industry.^{2/} The Association's members include trunked and conventional 800 MHz and 900 MHz SMR operators, licensees of

^{1/} Notice of Proposed Rule Making, WT Docket No. 95-5, FCC 95-16 (released January 20, 1995) ("NPR" or "Notice").

^{2/} These interests typically were classified as private carriers prior to 1993. Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, Title VI § 6002(b), 107 Stat. 312, 392 (1993).

wide-area SMR systems, and commercial licensees in the 220 MHz band.

AMTA members operate wireless radio facilities from transmitter locations throughout the United States. Their stations currently are authorized under so-called "site-specific" licensing schemes.^{3/} Unlike operators in services such as cellular and PCS, each of the Association's members must be authorized specifically for each location from which it proposes to transmit radio signals.^{4/} This requirement is burdensome in and of itself; it also precludes genuine regulatory parity with those Commercial Mobile Radio Services ("CMRS") authorized on a geographic basis.^{5/} Therefore, the Association welcomes any streamlining of the process associated with site-specific licensing, including the changes proposed in the Notice.

II. ANTENNA STRUCTURE REGISTRATION

The current system for ensuring air navigation safety requires coordination between the FCC and the FAA. The FAA first determines whether a particular antenna structure poses a potential air navigation hazard based on its technical analysis. If so, it recommends appropriate painting and lighting for the structure. Those requirements

^{3/} The FCC has proposed to modify the 800 MHz and 900 MHz regulatory structures to permit geographic, rather than site-specific, licensing, at least for certain systems. See, Further Notice of Proposed Rule Making, PR Docket No. 93-144, 9 FCC Rcd ____ (November 22, 1994) and First Report and Order and Further Notice of Proposed Rule Making, PR Docket No. 89-553, 8 FCC Rcd 1469 (1993). The Association has supported those FCC initiatives.

^{4/} See Notice at ¶ 13.

^{5/} See, Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, GN Docket No. 93-252, Second Report and Order, FCC 94-31, 9 FCC Rcd 1418 (1994); Erratum, 9 FCC Rcd 2156 (1994); Third Report and Order, FCC 94-212, 9 FCC Rcd ____ (adopted August 9, 1994, released September 23, 1994); Erratum, 9 FCC Rcd ____ (1994).

then are specified on the FCC authorizations for every licensee and permittee proposing to use that facility.

It is one of the peculiarities of our Federal regulatory scheme that, although the FCC and the FAA share statutory responsibility for ensuring that antenna structures do not present a hazard to air safety, the FAA lacks authority to require compliance with its air navigation safety requirements. Notice at ¶¶ 2 and 5. The FCC, however, does have enforcement authority, and typically specifies the FAA recommendations as part of the station authorization. Thus, every FCC application for every potential user on every antenna structure is reviewed to determine if it conforms to applicable FAA requirements and, if so, to specify on the authorization the particular painting and/or lighting required.

The instant Notice concludes that the FCC's portion of the current system is unnecessarily burdensome to government and industry. The Commission proposes to replace it with an antenna structure registration requirement. This approach would require antenna structure owners, rather than individual licensees or permittees, to register the necessary information about the antenna structure. Specifically, the NPR recommends that a revised FCC Form 854 be used to register the structure at the outset, as well as to identify certain changes to the structure, including a change in the height, a correction of coordinates, a change in painting and lighting specifications, or a change in structure ownership, and to advise the FCC of the dismantling of the structure. Notice at ¶ 4. The FCC would assign a unique Antenna Structure Registration Number to that facility which would be used for identification purposes in subsequent licensing processes.

AMTA strongly supports the Commission's intention to impose primary

responsibility for all antenna structure notifications on the landlord/owner, and not on the tenant/licensee. The Association's members are painfully familiar with the inequity and ineffectiveness of holding licensees responsible for compliance with FCC and FAA requirements when the licensees often have no legal authority over the tower on which they simply rent space. These entities typically have no contractual or other basis to correct the painting and/or lighting violations for which the FCC holds them responsible. They are legally incapable of taking those actions directed by the FCC. To the extent that the FCC's proposal will shift that responsibility to the appropriate party, it not only will streamline the FCC's processes, but actually will improve air navigation safety.

Thus, the Association agrees with the FCC that the owners of all antenna structures requiring FAA notification should be required to register their structure(s). Notice at ¶ 8. It is not entirely clear why the FCC would require the owner to provide all licensees and permittees with an actual copy of the Registration to be maintained with other station records since the Registration would be referenced on their individual FCC applications and changes would be the owner's sole responsibility. However, because this requirement does not appear unduly burdensome on either the owner or the licensees, and assuming the rules specify unequivocally that initial and modification registration responsibility lies with the structure owner, AMTA does not oppose it.

Although AMTA supports the registration concept, it also urges the Commission to ensure that its system does not delay the actual construction of facilities. The registration form will be filed after the structure owner has already secured approval for construction from the FAA, and likely cleared numerous other governmental hurdles. The FCC should clarify that it does not intend issuance of the Registration Number to

constitute a pre-construction requirement. Tower registration should not delay initiation of construction of a facility which already has received all requisite FAA and other regulatory approvals.

AMTA also recommends that the rules provide a "grace period" for licensees who are notified by a tower owner that there has been a change or correction in the data relating to the structure on which they operate. Licensees should have a specified period of time in which to file for modification of their authorizations, consistent with the modified Form 854. During that period, and while the modification request is pending, licensees should not be subject to a forfeiture for operating pursuant to an "incorrect" authorization. This will eliminate the need for each licensee to seek a Special Temporary Authorization to reflect the corrected information, thereby eliminating an unnecessary drain of FCC and industry resources.

The Notice also seeks comment on the timing of the registration process itself. The Association recommends that the FCC employ its geographical implementation plan in its transition to a registration program. Notice at ¶ 11(a). Under this approach, the FCC would set filing windows for the registration of structures by region of the country. The potential disadvantage of this method is that owners with structures concentrated in a particular geographic area could have a substantial number of facilities to register in a limited amount of time. However, since the structures in question have already been cleared by the FAA, and since the industry has been alerted as to the incipency of this program, prompt preparation and submission of the Form 854 should not require any extraordinary effort. In fact, AMTA suggests that the length of each such filing window would be dictated by FCC resource constraints rather than industry requirements. Since

the FCC intends to take formal action on each registration application, it may wish to limit the number of such requests it must process simultaneously.

The Association believes that this system would be superior to the alternatives suggested. Notice at ¶¶ 11(b) and (c). Implementation by antenna structure height will require owners to conduct one additional level of review which appears unnecessarily confusing. Implementation upon renewal would permit registration at any time, but would not provide adequate certainty to licensees and permittees that the particular structure on which they operate will have completed the necessary registration process at the time of the licensee's authorization renewal. The overall record of tower owner adherence to FCC and FAA requirements is not such that the Association could support this more flexible approach.

The Notice also queries whether different provisions need to be adopted for non-site-specific services such as cellular and PCS. AMTA believes not. The proposed rules are workable for entities whose systems are licensed on a geographic basis, a category into which a substantial number of the Association's members expect to fall in the near-term future, as well as those authorized on a site-specific basis. Licensees who are not required to specify the location of all transmitter locations prior to the grant of the geographic system license would not be obligated to provide a Registration Number for sites prior to the system grant. Notice at ¶ 13. However, the tower owner, whether the same entity as the licensee or an unrelated third party, would still be required to secure any necessary FAA determination and to register the structure. Since registration should be only minimally burdensome, this approach will ensure an accurate data base of structures and will provide the FCC with immediately available information about the

owner if a problem arises.

The Association also has comments on certain specific questions posed by the FCC regarding its proposed antenna structure registration system. Notice at ¶ 16.

(a) The FCC should not require registration of structures which are painted or illuminated voluntarily although not required to do so by the FCC or the FAA. There is no air navigation safety rationale to support registration, and requiring it might cause some owners to abandon a policy that can only be beneficial.

(b) The FCC should make the new database of antenna structures available in all reasonable formats, including, but not limited to, on-line access, hard-copy updates, and CD-ROM formats. Interested parties will likely have a broad range of information gathering capabilities, all of which should be accommodated as serving the public interest.

(c) The Commission's ongoing experiments with electronic application filing are sufficiently encouraging to support a similar effort in this area.

(d) The integrity of the Registration database would be enhanced by periodic renewals. AMTA suggests that a ten year renewal requirement would not be unduly burdensome, particularly when electronic renewals are permitted.

(e) In an era of fiscal austerity, AMTA sees no reason to exempt structure owners from financial responsibility. A Registration fee reflective of the cost of administering the program should be imposed.

(f) AMTA believes that more information is needed regarding the benefits of registering all 500,000 antenna structures, rather than the 70,000 which require FAA notification, before such a requirement should be adopted. It is not clear from the Notice

that expansion of the Registration program to include all authorized towers would be a productive use of FCC or industry resources.

(g) The Association recommends that the FCC employ all of the identified notification forms in the initial Registration drive. In particular, a letter directed to tower owners will likely elicit the broadest possible response. AMTA also assumes that owners will be notified by the users on their structures since they will need the structure Registration Number.

(h) For reasons identical to those which support holding the structure owner, not the licensees, responsible for compliance with FCC/FAA requirements, tower owners also should have sole responsibility for complying with the Commission's environmental rules. See 47 C.F.R. §§ 1.1301-1.1319. Those rules are intended to ensure that antenna structures are not constructed until all requisite environmental considerations have been addressed. The appropriate party to make that assessment, and to so advise the FCC of those determinations, is the structure owner, not an applicant. This change should be applied prospectively as new antenna structures are registered and as existing facilities are modified.

(i) A corrected GPS analysis should become the standard for antenna structure location determinations. This process has become extremely cost reasonable in recent years and is the only consistently reliable method of determining site locations and ground elevations. Again, AMTA recommends that this standard be applied only prospectively; it should not be a prerequisite for the registration of structures which relied on a different method, but which have been cleared by the FAA.

III. PART 17 UPDATE

In addition to streamlining the antenna structure clearance process, the FCC proposes to amend Part 17 of the Commission's Rules to incorporate by reference the recommendations found in the FAA Advisory Circulars, Obstruction Marking and Lighting (AC 70/7460-1H), August 1991 and Specification for Obstruction Lighting Equipment (AC 150/5345-43D), July 1988. Notice at ¶ 18. The recommendations in these Circulars are relied upon by the FCC when prescribing painting and/or lighting requirements for FCC-approved antenna structures, but are not formally incorporated in the FCC's Rules. Adoption of this proposal would routinize a process which currently must be performed by individual FCC staff review and evaluation.

AMTA supports this proposal as a reasonable effort to conserve limited Commission personnel and other resources while incorporating more current FAA air safety recommendations in the FCC's own rules. It also endorses the recommendation that present painting and lighting requirements be grandfathered for ten years. Notice at ¶ 19. Since the FCC and the FAA apparently have determined that the safety of the public generally and of air navigation specifically would not be unreasonably jeopardized by doing so, AMTA concurs with this more gradual approach.

IV. NEW REQUIREMENTS FOR ANTENNA STRUCTURE OWNERS

As noted previously, AMTA is particularly pleased that the instant Notice proposes to hold the tower owner primarily responsible for compliance with painting and/or lighting requirements. This modification of the FCC's enforcement policies is supported fully by the Commission's enabling statute and, in the Association's opinion, is over-

due.^{6/} The FCC is correct in its assumption that focusing on the entity which has control over the structure will speed resolution of problems associated with painting and/or lighting violations. Notice at ¶ 21. Tenants/licensees are often legally incapable of correcting the violations, but typically should be able to direct the FCC to any tower owner the Commission has been unable to locate. In fact, AMTA recommends that the FCC be required to seek the assistance of licensees on the structure in locating the owner before the Commission may shift responsibility for violations to those licensees.

While the Association would prefer that licensees be absolved entirely of responsibility for painting and lighting of antenna structures, it recognizes that the Commission intends to ensure that some party ultimately will be held accountable. In the very unlikely event that the Commission's and the tenants' combined efforts to locate the owner are fruitless, AMTA recommends that tenants/licensees required to correct these problems be given a reasonable period of time to do so before the FCC is authorized to assess a forfeiture in recognition of their secondary liability and lesser legal ability to effectuate the necessary corrections.

V. CONCLUSION

For the reasons described above, AMTA urges the Commission to proceed expeditiously to complete this proceeding consistent with the recommendations detailed herein.

^{6/} See Pub. L. No. 102-538, 106 Stat. 3533, enacted October 27, 1992.

CERTIFICATE OF SERVICE

I, Cheri Skewis, a secretary in the law office of Lukas, McGowan, Nace & Gutierrez, hereby certify that I have, on this 21st day of March, 1995, placed in the United States mail, first-class postage pre-paid, a copy of the foregoing Comments to the following:

- * Chairman Reed E. Hundt
Federal Communications Commission
1919 M Street, NW, Room 814
Washington, DC 20554
- * Commissioner James H. Quello
Federal Communications Commission
1919 M Street, NW, Room 802
Washington, DC 20554
- * Commissioner Andrew C. Barrett
Federal Communications Commission
1919 M Street, NW, Room 826
Washington, DC 20554
- * Commissioner Rachelle B. Chong
Federal Communications Commission
1919 M Street, NW, Room 844
Washington, DC 20554
- * Commissioner Susan Ness
Federal Communications Commission
1919 M Street, NW, Room 832
Washington, DC 20554
- * Regina Keeney, Chief
Wireless Telecommunications Bureau
Federal Communications Commission
2025 M Street, NW, Room 5002
Washington, DC 20554
- * Ralph Haller, Deputy Chief
Wireless Telecommunications Bureau
Federal Communications Commission
2025 M Street, NW, Room 5002
Washington, DC 20554

- * Gerald Vaughan, Deputy Chief
Wireless Telecommunications Bureau
Federal Communications Commission
2025 M Street, NW, Room 5002
Washington, DC 20554
- * Rosalind K. Allen, Chief
Commercial Radio Division
Wireless Telecommunications Bureau
Federal Communications Commission
2025 M Street, NW, Room 5202
Washington, DC 20554
- * David Furth, Deputy Chief
Commercial Radio Division
Wireless Telecommunications Bureau
Federal Communications Commission
2025 M Street, NW, Room 5202
Washington, DC 20554
- * Robert McNamara, Chief
Private Radio Division
Wireless Telecommunications Bureau
Federal Communications Commission
2025 M Street, NW, Room 5322
Washington, DC 20554
- * John Cinko, Jr., Chief
Policy Division
Wireless Telecommunications Bureau
Federal Communications Commission
1919 M Street, NW, Room 644
Washington, DC 20554
- * William E. Kennard, Esq.
General Counsel
Federal Communications Commission
1919 M Street, NW, Room 614
Washington, DC 20554
- Robert S. Foosaner, Esq.
Larry Krevor, Esq.
Nextel Communications, Inc.
800 Connecticut Avenue, NW, Suite 1001
Washington, DC 20006

Mary Brooner, Esq.
Motorola, Inc.
1350 Eye Street, NW, Suite 400
Washington, DC 20005

Emmett B. Kitchen
President
PCIA/NABER
1501 Duke Street, Suite 200
Alexandria, VA 22314

Mark Crosby
President and Managing Director
ITA/CICS
1110 North Glebe Road, Suite 500
Arlington, VA 22201

Michael Carper, Esq.
Vice President & General Counsel
OneComm Corporation
4643 S. Ulster Street, Suite 500
Denver, CO 80237

Jeffrey R. Hultman
President, Director and CEO
Dial Page, Inc.
301 College Street, Suite 700
Greenville, SC 29603-0767



Cheri Skewis

* Via Hand-Delivery